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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES  
14

15 WILLIAM TAYLOR,

16 Plaintiff,

17 v.

18 CITY OF BURBANK and DOES 1  
19 through 100, inclusive,,  
20 Defendants.

Case No. BC 422252

Assigned to: Hon John Shepard Wiley, Jr.

Action Filed: Sept. 22, 2009

Trial Date: November 16, 2010

DEFENDANT CITY OF BURBANK'S  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR DISCOVERY OF PEACE OFFICER  
PERSONNEL RECORDS AND MOTION TO  
COMPEL FURTHER RESPONSES TO  
INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS;  
DECLARATIONS OF CRAIG VARNER,  
KRISTIN A. PELLETIER, AND ROBERT J.  
TYSON

Date: April 22, 2010

Time: 8:30 a.m.

Dept.: 50

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION AND SUMMARY

By Motion filed on March 5, 2010, plaintiff Bill Taylor ("plaintiff") sought discovery into a then-pending internal affairs investigation of him. The City of Burbank (the "City") objected to providing that investigation while it was ongoing, but it has since been completed and plaintiff has been provided with the investigation and underlying documentation thereof. Nevertheless, plaintiff refused to take off calendar as moot his combined Motion to Compel discovery responses and *Pitchess* Motion (the "Motion").

In light of the recent events (the completion of the investigation and its submission to plaintiff), plaintiff is wasting the limited time of the Court on an issue that has already been resolved. For each of the following reasons, plaintiff's Motion should be denied:

First, plaintiff's motion to compel as to his Requests for Production and as to Form Interrogatory No. 216.1 should be denied as he failed to meet and confer about either one, as required;

Second, plaintiff's *Pitchess* Motion (i.e., his motion for personnel records under *Pitchess v. Superior Court* (1975) 11 Cal.3d 531, 538 and *Evidence Code* § 1043) is moot. The City has provided plaintiff the investigation documents requested in the Motion, and informed plaintiff that it will amend its discovery responses to reflect information from that investigation. Other information from plaintiff's personnel records has been offered and available to plaintiff since the City served its discovery responses; and

Third, plaintiff has not requested personnel records of other officers, and to the limited extent that plaintiff's Motion could be held to inadvertently seek such records, plaintiff has failed to identify such other officers or to show good cause for discovery into such records under the circumstances of this case as required by *Evidence Code* § 1043.

### II. STATEMENT OF FACTS

#### A. The Allegations

At all relevant times, plaintiff Bill Taylor was a Captain with the Burbank Police Department ("BPD"). For nearly two years (2007-2009) plaintiff was the Captain assigned to

1 serve in the capacity of a Deputy Chief (which is an assignment, rather than a ranked position in  
2 the BPD). In or about May of 2009, plaintiff was re-assigned to a different Captain's position in  
3 what he contends was a "demotion." Plaintiff further contends that this purported demotion was  
4 in retaliation for his discussions of racial discrimination and/or sexual harassment of other  
5 officers in the BPD with high ranking City officials.

6 The City denies any retaliatory motive, and also denies most, if not all, of plaintiff's  
7 assertions that he reported discrimination and/or harassment to the City. As plaintiff notes in the  
8 Motion, the Chief of Police elected to re-organize the Police Department to have more direct  
9 control over the Department and eliminated the assignment whereby a Captain served in the role  
10 of Deputy Chief. The Chief of Police had also lost confidence in plaintiff's ability to serve in that  
11 assignment, particularly after receiving information suggesting that plaintiff may have interfered  
12 in or influenced an internal affairs investigation while overseeing (by virtue of the Deputy Chief  
13 assignment) the Internal Affairs Division of the BPD.

14 **B. The Internal Affairs ("IA") Investigations**

15 In December 2007, Portos Bakery in the City of Burbank was robbed, and the BPD  
16 conducted an investigation of that crime ("the Portos Robbery Investigation"). Thereafter, the  
17 City received information that an officer or officers had engaged in misconduct (use of excessive  
18 force) during the Portos Robbery Investigation. The BPD conducted an internal investigation of  
19 the alleged misconduct (the "2008 IA Investigation") under investigation No. IA 4-26-08-1, but  
20 the evidence available/uncovered during that investigation did not substantiate the misconduct  
21 claims. [Declaration of Craig Varner ("Varner Decl.") attached hereto, ¶ 2.]

22 In 2009, however, significant new information about the purported misconduct during the  
23 Portos Robbery Investigation was brought to the attention of the BPD (specifically, a BPD officer  
24 who witnessed the use of force came forward as a witness), and a new internal investigation (the  
25 "2009 IA Investigation") was commenced under investigation No. IA 4-16-09. The Los Angeles  
26 County Sheriff's Department and the Federal Bureau of Investigation also commenced criminal  
27 investigations into this alleged misconduct based on the new evidence. Plaintiff was one of the  
28 subjects of the 2009 IA Investigation, based on allegations that he had interfered in the

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1 investigation of a BPD officer in the earlier 2008 IA Investigation. [Varner Decl., ¶¶ 3-4.] The  
2 2009 IA investigation also involved numerous other officers and investigations into alleged  
3 misconduct that was not part of, related to, or used in, the investigation of plaintiff. [Varner  
4 Decl., ¶ 6.]<sup>1</sup>

5 **C. The Requests and Responses**

6 On November 11, 2009, plaintiff served written discovery upon the City, including  
7 requests for admissions (not at issue in this motion), form interrogatories, special interrogatories,  
8 and requests for production of documents. [Declaration of Kristin A. Pelletier ("Pelletier Decl.")  
9 attached hereto, ¶ 2.] Following an extension of the time to respond, the City served responses  
10 thereto on January 15, 2010. [Id., ¶ 3.] In response to plaintiff's discovery requests calling for  
11 production of plaintiff's personnel file or disciplinary history, the City indicated that such  
12 information would be presented once plaintiff signed a Waiver of Personnel Records privilege  
13 form. [Id., ¶ 3; See also Motion, Ex. G, pp. 4:12-14, 5:6-8, and 5: 7-19.] The 2009 IA  
14 Investigation was pending at the time of the City's discovery responses and the confidential and  
15 incomplete nature of that investigation limited the City's ability to provide detailed responses to  
16 some of plaintiff's discovery requests. [Id., ¶ 3.] The 2009 IA Investigation was still pending at  
17 the time that plaintiff filed the instant Motion. [Varner Decl., ¶ 3.]

18 **D. The Meet and Confer Process**

19 On February 16, 2010, plaintiff's counsel Gregory Smith sent a meet and confer letter to  
20 the City's counsel, Kristin Pelletier. [Pelletier Decl., ¶ 4, Ex. A.] The letter expressly only  
21 engaged the meet and confer process over the City's responses to "Form Interrogatories 201.3 et  
22 seq." and "Special Interrogatories Nos. 1 through 3." [Id., Ex. A, p. 1.] On February 24, 2010,  
23 the City's counsel, Robert Tyson, sent a letter in response.<sup>2</sup> [Id., ¶ 5; Declaration of Robert J.

24 <sup>1</sup> More specifically, the 2009 IA Investigation examined the conduct of over 20 BPD  
25 officers, primarily for their alleged misconduct (use of force) during the Portos Robbery  
26 Investigation, for failing to report misconduct of other officers during the Portos Robbery  
27 Investigation or taking steps to prevent other officers from reporting the misconduct, and/or for  
being untruthful when questioned about what occurred during the Portos Robbery Investigation.  
Plaintiff, on the other hand, was investigated for using his official position to interfere in and  
influence the 2008 IA Investigation.

28 <sup>2</sup> The meet and confer was limited to the exchange of letters. [Tyson Decl., ¶ 2.]

1 Tyson ("Tyson Decl.") attached hereto, ¶ 2, Ex. B.] Among other things, the City noted the facts  
2 that plaintiff had not filed a *Pitchess* motion, and that the internal investigation into plaintiff's  
3 possible misconduct had not yet been completed. The City suggested that following completion  
4 of the investigation, the parties could either reach agreement regarding the production of these  
5 files or plaintiff could bring a motion asking the Court to determine the propriety thereof. The  
6 City's counsel further noted that he was not privy to the status of the confidential investigation,  
7 but could inquire as to the projected completion date of that investigation. The City also  
8 suggested an indefinite extension of plaintiff's deadline to move to compel until two weeks after  
9 the investigation was concluded and plaintiff was further advised of the City's position on the  
10 discoverability of the investigation documents. [Id.]

11 Plaintiff did not respond to the City's proposals. Instead, he filed the instant Motion on  
12 March 5, 2010. [Pelletier Decl., ¶ 6.] On March 11, 2010, counsel for the City and plaintiff  
13 further discussed the issue, with the City's counsel informing plaintiff's counsel that she had  
14 inquired into the status of the pending investigation and had been informed that it was nearing  
15 completion. The City's counsel further relayed that, once the investigation was completed, it  
16 would either be revealed as part of the disciplinary process<sup>3</sup> or the parties could discuss turning it  
17 over under a stipulated protective order. [Id.]

18 **E. The Completion of the Investigation and Disclosure of Documents**

19 The 2009 IA Investigation, including those allegations against plaintiff, was completed in  
20 late March, 2010, shortly after the parties' last discussion of it. [Varner Decl., ¶ 5.] On March  
21 31, 2010, the BPD provided plaintiff with notice of the results of that investigation as to him. As  
22 part of the administrative process, the BPD also provided plaintiff with the supporting  
23 documentation, including the 23-page report of the investigation of allegations asserted against  
24 plaintiff, 101 pages of witness interviews as a part thereof, as well as 65 pages of the underlying,  
25 2008 IA Investigation into alleged misconduct in the Portos Robbery Investigation, and a CD  
26 recording of all of the interviews conducted in the 2008 IA Investigation and of the interviews

27 <sup>3</sup> Under *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, a police officer subject to  
28 discipline is entitled to the materials upon which the discipline is based.



1 involving plaintiff in the 2009 IA Investigation. Plaintiff's counsel confirmed receipt of this  
2 information by letter dated March 31, 2010. [Id., ¶ 5, Ex. D.] On April 2, 2010, defense counsel  
3 accordingly wrote plaintiff's counsel a letter indicating that plaintiff's *Pitchess* Motion had been  
4 rendered moot and offering to provide amended discovery responses with more detailed  
5 information from the completed and now-disclosed investigation. [Pelletier Decl., ¶ 7, Ex. C.]  
6 Plaintiff's counsel declined to take the Motion off calendar despite this turn of events. [Pelletier  
7 Decl., ¶ 8.]

8 **III. PLAINTIFF FAILED TO MEET AND CONFER AS TO SEVERAL DISCOVERY**  
9 **REQUESTS RAISED IN THIS MOTION**

10 Plaintiff's meet and confer letter only requested the City to meet and confer as to "Form  
11 Interrogatories 201.3 et seq." and "Special Interrogatories Nos. 1 through 3." [Pelletier Decl., ¶ 4,  
12 Ex. A, p. 1.] Plaintiff never requested that the parties meet and confer as to any requests for  
13 production of documents. [Id; see also Tyson Decl., ¶ 2.] While City would concede that the  
14 reference to "Form Interrogatories No. 201.3 et seq." would be sufficient to raise Form  
15 Interrogatory No. 201.4 for meet and confer purposes, it did not address or raise Form  
16 Interrogatory, 216.1, a much more vast and wide ranging interrogatory that is in a different  
17 section of the Judicial Council Form.

18 Both CCP §§ 2030.300(b) (interrogatories) and 2031.310(b)(2) (request for production of  
19 documents) require that a motion to compel a further response "shall" be accompanied by a meet  
20 and confer declaration pursuant to CCP § 2016.040. That section provides that a meet and confer  
21 declaration must show a good faith attempt to resolve "each issue presented by the motion."  
22 "It is a central precept to the Civil Discovery Act of 1986 (§ 2016 et seq.) ... that civil discovery  
23 be essentially self-executing.... A self-executing discovery system is 'one that operates without  
24 judicial involvement.'" *Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1291 (citing *Townsend*  
25 *v. Superior Court* (1998) 61 Cal.App.4th 1431, 1434). Some effort to informally meet and confer  
26 is required in all instances. *Clement, supra*, 177 Cal.App.4th at 1294. Where there was no  
27 attempt to meet and confer about a discovery request at issue, the court may deny a motion to  
28 compel. *Townsend, supra*, 61 Cal.App.4th at 1439 (denying motion to compel deposition

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1 questions). Since plaintiff never attempted to meet and confer about either Form Interrogatory  
2 No. 216.1 or any requests for production of documents, the court should decline to compel any  
3 further response thereon.

4 **IV. PLAINTIFF'S PITCHESS MOTION AND MOTION TO COMPEL ARE MOOT**

5 Plaintiff's Motion essentially asks for three kinds of information: 1) more complete  
6 discovery responses as requested in the motion to compel; 2) information as to the current  
7 investigation of plaintiff pursuant to *Pitchess v. Superior Court*; and 3) information as to past  
8 complaints or discipline against plaintiff, also under the *Pitchess* decision. The Court's  
9 intervention is not required as any of the three, as respectively, 1) they are being amended now  
10 that the internal investigation of plaintiff is complete; 2) they have already been provided; and 3)  
11 they have been available since January when the City's discovery responses were served.  
12 Therefore, the Motion should be denied as moot.

13 **A. The City Will Amend Its Discovery Responses To Provide More Details From**  
14 **The Investigation Documents**

15 Some of plaintiff's form interrogatories requested information that was the subject of a  
16 then-pending internal investigation. The City accordingly and appropriately declined to provide  
17 this information until the investigation was complete. The objection to producing/providing  
18 information from an on-going investigation was both well taken and appropriate, particularly in  
19 the absence of a motion for such information under *Evidence Code* § 1043.

20 *Evidence Code* § 1043 is the exclusive method for obtaining not just police officer  
21 personnel records, but also the information from such records. *Davis v. City of Sacramento*  
22 (1994) 24 Cal.App.4<sup>th</sup> 393, 401, fn. 2 (citing *Hackett v. Sup. Ct.* (1993) 13 Cal.App.4<sup>th</sup> 96, 99). It  
23 would serve no purpose if such privileged information could be obtained by other means, such as  
24 by written or oral questioning of the officers or department. *Id.* In addition, ongoing police  
25 investigations and all of the information contained therein, are subject to their own layer of  
26 confidentiality. *County of Orange v. Sup. Ct.* (2000) 79 Cal.App.4<sup>th</sup> 759, 765. Plaintiff tries to  
27 distinguish *County of Orange* because it involved an attempt to seek disclosure of a pending  
28 criminal investigation in a civil case. However, *County of Orange* relied extensively upon

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1 *Williams v. Superior Court* (1993) 5 Cal.4<sup>th</sup> 337, 355, in which the California Supreme Court held  
2 that a Sheriff Department's internal disciplinary investigation was protected from disclosure  
3 under the Public Records Act while pending, and beyond. Assessing that holding, the *County of*  
4 *Orange* court held that notwithstanding that the Public Records Act does not apply to civil  
5 discovery, its express exemption of police investigative files (as noted in a case involving an  
6 internal disciplinary investigation) "reinforces the view that such files are confidential in nature."  
7 *County of Orange, supra*, 79 Cal.App.4<sup>th</sup> at 765.

8 As indicated in defense counsel's April 2, 2010 letter, in light of the completion of the  
9 internal investigation and its provision to plaintiff as part of the disciplinary process, the City has  
10 agreed to provide amended responses to plaintiff's discovery requests, including the discovery  
11 responses at issue herein. [Pelletier Decl., ¶ 7, Ex. C.] The City is in the process of preparing and  
12 will serve these responses on or before the date of the hearing on plaintiff's Motion. [Id.] As  
13 such, the Motion, as a motion to compel, should be considered moot as to items 1-n in the Notice  
14 of Motion.

15 **B. Plaintiff Has Been Provided With Information Requested By His Pitchess**  
16 **Motion As To The Recent Investigation of Him**

17 The City has already provided plaintiff and his counsel with the documentation of the now  
18 completed 2009 IA Investigation of him as part of an administrative process. [Varner Decl., ¶ 5.]  
19 This has provided plaintiff with the information requested in the Notice of Motion subsections a  
20 (no. 2), b, d, f, g, h, and i. Plaintiff's counsel may attempt to obfuscate the issue by claiming that  
21 such production was incomplete. However, such production included the complete report of the  
22 2009 IA Investigation as to plaintiff and the underlying information uncovered in the  
23 investigation of plaintiff. [Varner Decl., ¶¶ 5-6.] The City also produced the records of the  
24 underlying 2008 IA investigation, No. 4-26-08-1, item no. c in the Notice of Motion. [Id.] The  
25 only other material in the City's possession would be documents from investigations of other  
26 BPD officers in the 2009 IA Investigation that were not part of or used in the investigation of  
27 plaintiff. As discussed in Section V. below, that information was not requested in the Motion, nor  
28 was a proper showing made therefore. Accordingly, the Motion should be denied as moot as to  
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1 all records of the 2008 IA Investigation and 2009 IA Investigation which have already been  
2 provided to plaintiff.

3 **C. The City Long Ago Offered To Produce Other Personnel File Information**

4 Several of the items listed in the Notice of Motion seem to request access to past  
5 personnel records of plaintiff not related to the 2008 IA Investigation or the 2009 IA  
6 Investigation. These include items nos. a (no. 1), e, f, j, and k in the Notice. The City offered to  
7 produce such records in response to discovery once plaintiff signed a Waiver of Personnel  
8 Records privilege form.<sup>4</sup> [Pelletier Decl., ¶ 3; See also Motion, Ex. G, 4:12-14.] Plaintiff's  
9 Motion raises no objection to the waiver form, or as to the availability of these records once  
10 plaintiff signs the form. As such, the Motion should be denied as to all past personnel records of  
11 plaintiff.

12 **V. DISCOVERY OF RECORDS OF OTHER OFFICERS IS NOT SPECIFICALLY**  
13 **REQUESTED AND SHOULD NOT BE GRANTED**

14 Although the text of plaintiff's Motion makes quite clear that he is only asking for  
15 discovery of information related to complaints, investigations and discipline against him, one  
16 poorly or inadvertently phrased item in his Notice of Motion, requesting information from  
17 investigation No. 4-16-09-1, could be interpreted to request discovery of the entire 2009 IA  
18 Investigation of allegations, including investigations into alleged misconduct involving numerous  
19 other BPD officers.<sup>5</sup> [See Varner Decl., ¶ 6.] Since, as discussed below, plaintiff neither names  
20 nor provides good cause for the discovery of personnel investigations involving other BPD  
21 officers, the Motion must and should be denied to the extent it seeks any such records.<sup>6</sup>

22 <sup>4</sup> As a matter of law, the City also holds a privilege against production of the personnel  
23 records of its police officers. *Davis v. City of Sacramento* (1994) 24 Cal.App.4<sup>th</sup> 393, 401 (citing  
*San Francisco Police Officers' Assn. v. Sup. Ct.* (1988) 202 Cal.App.3d 183, 189).

24 <sup>5</sup> Plaintiff presumably listed No. 4-16-09-1 inadvertently, on the theory that it was only the  
25 investigation of him. In reality, as explained above, that number is the master number assigned to  
26 all of the internal investigations relating to the Portos Bakery incident that were conducted by the  
27 BPD in 2009 as part of the 2009 IA Investigation, including the investigations of different  
misconduct charges against numerous other officers whose records are not at issue and/or  
requested in plaintiff's Motion. [Varner Decl., ¶ 6.]

28 <sup>6</sup> Plaintiff may argue that circumstances have changed and attempt to make a showing for  
these records in his reply brief. This would be improper. *Balboa Ins. Co. v. Aguirre* (1983) 149  
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1           **A.     The Motion Only Requests Information About Investigations Of Plaintiff**

2           While rambling long on the law of retaliation, plaintiff's Motion makes clear that he seeks  
3           discovery through *Pitchess* procedures of the facts supporting one of the City's stated reasons for  
4           his re-assignment in hopes of showing the reason to be a sham. Thus, he seeks information "in  
5           regard to the defendant's alleged reason for the adverse employment actions taken against  
6           plaintiff." [See Motion, p. 7:5-9 (emphasis added).] Similarly, plaintiff opines that there is no  
7           privacy issue involved with the employee records because only his records are involved.  
8           [Motion, p. 9:22-26.] Finally, the Motion states that "the records pertaining to the investigations  
9           by defendant of the allegations made against plaintiff are relevant and material." [Motion, p.  
10          11:4-5 (emphasis added).]

11          In short, the Motion makes clear that plaintiff has not attempted to make a *Pitchess*  
12          motion for discovery of personnel records of any BPD officer other than himself, and the Court  
13          should decline any belated request for broader relief than what was sought.

14           **B.     Plaintiff Has Not Identified Any Other Police Officers Whose Personnel**  
15           **Records He Seeks Through The Motion**

16          *Evidence Code* § 1043 is the exclusive method for obtaining both police officer personnel  
17          records and information contained therein. *Davis, supra*, 24 Cal.App.4th at 401, fn. 2. That  
18          section requires that a motion for such records must identify, *inter alia*, "the peace or custodial  
19          officer whose records are sought." *Evid. Code* § 1043(b)(1). This is an important requirement,  
20          because the City must then notify "the individual" officer whose records are sought. *Evid. Code*  
21          § 1043(a).

22          Nowhere in plaintiff's Notice or in his Motion does he identify any peace officers, other  
23          than himself, whose records are sought. The City therefore had and has no one to notify, who  
24          might elect to object on their own to plaintiff's request. Because police personnel records are  
25          confidential, their disclosure requires adherence to the motion and hearing requirements of the  
26          *Evidence Code*. *Rosales v. City of Los Angeles* (2000) 82 Cal.App.4th 419, 426. To the extent  
27          Cal.App.3d 1002, 1010. Any attempt by plaintiff to show good cause for discovery of personnel  
28          records of other officers must and should be made in a new *Pitchess* motion, to which the City  
            would have a chance to prepare an opposition.

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1 that plaintiff's Motion intentionally or inadvertently requests confidential information regarding  
2 other, unidentified police officers, he has not adhered to the exclusive procedures of *Evidence*  
3 *Code* § 1043, and any request for such records should be denied.

4 C. **Plaintiff Has Not Attempted To Show Good Cause For The Disclosure Of**  
5 **Personnel Records Of Other BPD Officers**

6 As noted above, information from the personnel file of a police officer is private, personal,  
7 and privileged and may only be disclosed pursuant to a motion brought in compliance with the  
8 rules and procedures set forth in *Evidence Code* § 1043 *et seq.* See *Penal Code* § 832.7(a); *City*  
9 *of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 81-84. Those procedures require that the  
10 moving papers and affidavit establish good cause for the production of police personnel records,  
11 "setting forth the materiality thereof to the subject matter involved to the pending litigation."  
12 *Evid. Code* § 1043(b)(3). The California Supreme Court has expressly prohibited "fishing  
13 expeditions" in this context. *City of Santa Cruz, supra*, 49 Cal.3d at 85 (quoting *Pitchess v.*  
14 *Superior Court* (1975) 11 Cal.3d 531, 538).

15 Numerous cases have interpreted the good cause requirement, including *City of San Jose*  
16 *v. Superior Court* (1998) 67 Cal.App.4<sup>th</sup> 1135, 1147, which held that the party seeking such  
17 records must provide a "specific factual scenario" establishing a "plausible factual foundation"  
18 that relevant misconduct occurred. Moreover, in *City of Santa Cruz v. Superior Court* (1987) 190  
19 Cal.App.3d 1669, 1673, the court explained that a party is not automatically entitled to police  
20 officer personnel information; he must show a plausible factual justification for the discovery.

21 Plaintiff has neither shown, nor attempted to show, any plausible justification for the  
22 discovery of personnel records of other BPD officers, including the investigations of alleged  
23 misconduct of other officers contained within Master Case No. IA 4-16-09-1. His only argument  
24 in favor of discovery of investigation information is that it is necessary to show that the charges  
25 against him were a sham and pretext for his own purported "demotion." This provides no  
26 justification for discovery into investigations of allegations against other, unidentified officers for  
27 their own separate and individual alleged misconduct that have no bearing on this issue.<sup>7</sup>

28 <sup>7</sup> Even if plaintiff had made a showing of good cause, this is only the first hurdle to  
LA #4825-6810-5733 v2 10

1 **VI. THE CITY VALIDLY ASSERTED THE ATTORNEY-CLIENT PRIVILEGE AND**  
2 **ATTORNEY WORK PRODUCT DOCTRINE AS TO TWO BROADLY PHRASED**  
3 **DISCOVERY REQUESTS**

4 While the City provided a response to Request for Production No. 2 and Special  
5 Interrogatory No. 3, it also objected on the grounds of the attorney-client privilege and attorney  
6 work product doctrine. The attorney-client privilege and attorney-work product objections are  
7 not limited or directed to the 2009 IA Investigation, as plaintiff's motion clearly presumes.

8 Rather, the broadly phrased requests would call for the identification and production of  
9 any document that inter alia, "refers" to the purported "demotion" of plaintiff. Clearly, such  
10 requests could improperly encompass privileged communications between the City and litigation  
11 counsel referring to this issue, *Evidence Code* § 952; *Mitchell v. Sup. Ct.* (1984) 37 Cal.3d 591,  
12 601, as well as counsel's work product and analysis of this issue. *CCP* § 2018.010. It could also  
13 encompass any documents showing communication between the Chief of Police and the City  
14 Attorney's office or other legal counsel seeking legal advice prior to the purported "demotion" in  
15 2009, as well as counsel's work product analyzing that issue, if any. *Roberts v. City of Palmdale*  
16 (1993) 5 Cal.4<sup>th</sup> 363, 371 (privilege applies to legal advice even when no litigation yet  
17 threatened); *County of Los Angeles v. Sup. Ct.* (2000) 82 Cal.App.4<sup>th</sup> 819, 833 (work product not  
18 limited to actions in anticipation of litigation). Therefore, these objections are well taken, but will  
19 not limit identification or production of relevant, non-privileged documents.

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27 overcome to obtain discovery on a Pitchess motion. The next step would be for the Court to  
28 review documents *in camera* to exclude from disclosure several enumerated categories of  
information and to protect other privacy interests. *Rosales, supra*, 82 Cal.App.4<sup>th</sup> at 425-426.  
LA #4825-6810-5733 v2 11

1 **VII. CONCLUSION**

2 For all of the foregoing reasons, plaintiff's Motion to Compel and for Discovery of Police  
3 Officer Personnel Record information pursuant to *Evidence Code* § 1043 should be denied.

4 Dated: April 8, 2010

Burke, Williams & Sorensen, LLP

5  
6 By: 

Kristin A. Pelletier  
Attorneys for Defendant  
City of Burbank



**DECLARATION OF CRAIG VARNER**

I, Craig Varner, hereby declare as follows:

1. I am a Captain with the City of Burbank Police Department, and have been employed by the Department for the past twenty-eight (28) years. I have served as a Captain for the past five years, and have served as the commanding officer of the Administrative Division, Professional Standards Bureau in Internal Affairs since May 2009. In that capacity, my duties include conducting and overseeing internal investigations of allegations of officer misconduct. As such, unless otherwise noted, I have personal knowledge of the following statements, and if called as a witness, I could and would testify competently thereto.

2. In December 2007, Portos Bakery in the City of Burbank was robbed, and the Burbank Police Department (hereinafter, the "BPD" or the "Department") conducted an investigation of that crime. Thereafter, the City received information that an officer or officers had engaged in misconduct during the criminal investigation. BPD investigated the alleged misconduct under investigation No. IA 4-26-08-1, but the evidence available/uncovered in that investigation did not substantiate the misconduct claims.

3. In 2009, however, significant new information about the purported misconduct was brought to the attention of the BPD (specifically, a BPD officer who allegedly witnessed the misconduct came forward as a witness), and a new internal investigation was commenced under investigation no. IA 4-16-09-1. This new investigation examined the conduct of numerous officers in the Department, and was pending during the period between November 11, 2009 through March 5, 2010, which I am informed is the time between service of plaintiff's discovery requests and plaintiff's filing of a motion to compel further responses to those requests. Plaintiff was a subject of the 2009 internal investigation, based on allegations that he had interfered in the earlier, 2008 investigation.

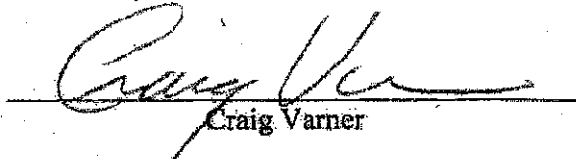
4. I am informed and believe that the Los Angeles County Sheriff's Department and the Federal Bureau of Investigation also opened criminal investigations of the alleged misconduct of BPD officers examined in investigation No. IA 4-16-09-1.

1 March 31, 2010, the Department provided plaintiff with notice of the results of that investigation,  
2 which had been given the sub-number IA 4-16-09-1 #34. As part of the administrative process,  
3 the Department also provided plaintiff with the supporting documentation, including the 23-page  
4 report of the investigation of the allegations asserted against plaintiff, 101 pages of witness  
5 interviews as a part thereof, as well as 65 pages of the underlying, original (2008) internal  
6 investigation into alleged misconduct during the Portos robbery investigation, and a CD recording  
7 of all of the interviews conducted in both that investigation and the 2009 investigation involving  
8 plaintiff. This included the complete report of the investigation of allegations against plaintiff,  
9 and the underlying information used in the investigation of plaintiff. Plaintiff's counsel  
10 confirmed receipt of this information by letter to the Chief of Police dated March 31, 2010. A  
11 true and correct copy of this letter is attached to hereto as Exhibit D.

12 6. Investigation No. IA 4-16-09-1 encompasses over 30 investigations of numerous  
13 (over 20) BPD officers, generally for alleged misconduct related to the *criminal* investigation of  
14 the Portos Bakery robbery and its aftermath (primarily using force against interview subjects  
15 and/or failing to report or trying to prevent the reporting of the use of force against subjects).  
16 Plaintiff was not accused of any misconduct in that criminal investigation (and to my knowledge  
17 was not involved in that criminal investigation). Rather, the investigation of him stemmed from  
18 his actions during the original *internal* investigation into misconduct during the Portos criminal  
19 investigation, IA 4-26-08. In short, IA 4-16-09-1 contains confidential personnel information of  
20 numerous BPD officers that was not part of or utilized in the investigation of plaintiff.

21 I declare under penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct.

23 Executed this 2 day of April, 2010, at Burbank, California

24   
25 Craig Varner  
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**DECLARATION OF KRISTIN A. PELLETIER**

I, Kristin A. Pelletier, hereby declare as follows:

1. I am an attorney licensed to practice before this Court and a partner in the law firm of Burke, Williams & Sorensen, LLP, counsel of record for defendant City of Burbank in this action. As such, unless otherwise stated, I have personal knowledge of the following statements and, if called to testify, I could and would testify competently thereto.

2. On November 11, 2009, plaintiff served written discovery upon the City, including requests for admissions (not at issue in this motion), form interrogatories, special interrogatories, and requests for production of documents.

3. Following a stipulated extension, the City served responses to plaintiff's discovery on January 15, 2010. In response to questions calling for production of personnel records of plaintiff, the City indicated that such documents would be produced following plaintiff's execution of a Waiver of Personnel Records privilege form allowing it to do so. The City's ability to provide detailed responses to some discovery requests was limited by the confidentiality of the ongoing investigation into misconduct allegedly committed by plaintiff, and the City so noted in its responses and objections.

4. Plaintiff's counsel Gregory Smith sent me a meet and confer letter dated February 16, 2010. A true and correct copy of that letter is attached hereto as Exhibit A. The letter only engaged the meet and confer process over the City's responses to "Form Interrogatories 201.3 et seq." and "Special Interrogatories Nos. 1 through 3."

5. At my request, on February 24, 2010, my co-counsel, Robert Tyson, responded to Mr. Smith's meet and confer letter. Mr. Tyson sent a letter to Mr. Smith in response, a true and correct copy of which is attached hereto as Exhibit B.

6. Plaintiff did not respond to the City's February 24, letter. Instead, he filed the instant Motion on March 5, 2010. On March 11, 2010, I discussed the Motion with Mr. Smith, informing him that I had inquired into the status of the pending investigation and had been informed that it was nearing completion. I relayed that, once the investigation was completed, it would either be revealed as part of the disciplinary process or the parties could discuss turning it

1 over under a stipulated protective order.

2 7. On April 2, 2010, I wrote plaintiff's counsel a letter indicating that his *Pitchess*  
3 *Motion* was moot and offering to provide amended responses to written discovery responses with  
4 more detailed information from the completed and now-disclosed investigation. A true and  
5 correct copy of my letter is attached hereto as Exhibit C. The City is preparing these amended  
6 responses, which I intend to serve on or before the date of the hearing on plaintiff's Motion.

7 8. On April 6, 2010, Plaintiff's counsel responded to my April 2 letter in writing and  
8 declined to take the Motion off calendar.

9 I declare under penalty of perjury under the laws of the State of California that the  
10 foregoing is true and correct.

11 Executed this 6th day of April, 2010, at Los Angeles, California  
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Kristin A. Pelletier

**DECLARATION OF ROBERT J. TYSON**

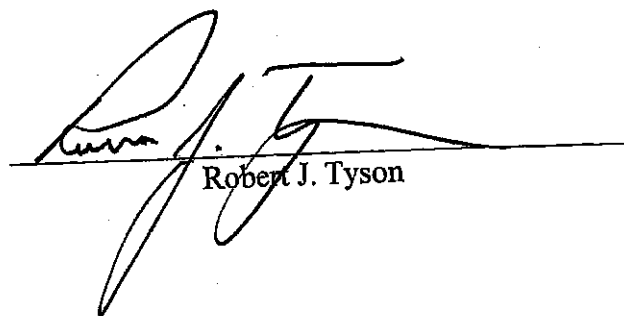
I, Robert J. Tyson, hereby declare as follows:

1. I am an attorney licensed to practice before this Court and a partner with the law firm of Burke, Williams & Sorensen, LLP, counsel of record for defendant City of Burbank in this action. As such, unless otherwise stated, I have personal knowledge of the following statements, and if called to testify, I could and would testify competently thereto.

2. At the request of Kristin Pelletier, I followed up on plaintiff counsel Gregory Smith's February 16, 2010 meet and confer letter. I contacted his office in writing and by telephone and left him at least one message to that effect. Someone from his office responded and asked on his behalf for me to respond in writing. I drafted and sent a letter dated February 24, 2010, to Mr. Smith responding to the issues in his meet and confer letter. A true and correct copy of this letter is attached hereto as Exhibit B. The meet and confer process was limited to this exchange of letters.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of April, 2010, at Los Angeles, California.

  
Robert J. Tyson



LAW OFFICES OF  
**GREGORY W. SMITH**  
6300 CANOGA AVENUE, SUITE 1590  
WOODLAND HILLS, CALIFORNIA 91367  
TELEPHONE (818) 712-4000 • (213) 388-2400  
FACSIMILE (818) 712-4004

February 16, 2010

**VIA FACSIMILE & U.S. MAIL**

Kristin A. Pelletier, Esq.  
Burke Williams & Sorenson LLP  
444 South Flower Street, Suite 2400  
Los Angeles, California 90071-2953

Re: **William Taylor v. City of Burbank**  
**Los Angeles County Superior Court Case No. BC 422 252**

Dear Ms. Pelletier:

This letter shall serve as a formal request to meet and confer concerning Defendant's responses to Form Interrogatories 201.3, et seq.; and Special Interrogatories 1 through 3.

As you know, the central theme in Plaintiff's retaliation case is the adverse employment decision that we contend was a demotion from Captain to Deputy Chief. Based upon your responses, Taylor was removed from his position on account of allegations of impropriety, in that Captain Taylor allegedly improperly interfered in an internal affairs investigation and attempted to influence the outcome.

The allegations that have been made against Captain Taylor are quite serious and have a direct impact on the issue of his adverse employment decision. However, you have objected to sharing any information regarding these allegations by stating an ongoing investigation is occurring and the material is confidential and privileged. Consequently, we are unable to dispute these allegations since you have not provided us with the names of any witnesses that support the allegations, any documents that support the allegations, and any specific facts that support the allegations.

Please accept this as an attempt to resolve these issues by entering into a protective order which will prohibit the use of witness information and documentation without further court order. Additionally, all of this information will be kept confidential and will not be disseminated to any third persons without

Re: William Taylor v. City of Burbank  
Kristin A. Pelletier, Esq.  
February 16, 2010  
Page Two

court order.

I look forward to working out a mutually agreeable solution to this problem, however, if one cannot be found, I will be forced to seek court intervention. Please respond to this letter no later than February 19, 2010 as the motion to compel deadline is March 5, 2010.

Very truly yours,



Gregory W. Smith

cc: Christopher Brizzolara, Esq.  
Carol A. Humiston, Sr. Asst. City Atty.



EXHIBIT B

February 24, 2010

**VIA FACSIMILE AND U.S. MAIL**

Gregory W. Smith, Esq.  
Law Offices of Gregory W. Smith  
6300 Canoga Avenue, Suite 1590  
Woodland Hills, CA 91367

Re: William Taylor v. City of Burbank  
LASC Case No. BC 422252

Dear Mr. Smith:

Pursuant to your request, this letter responds to your letter dated February 16, 2010. I must disagree with several aspects of your description of the events in the second paragraph of your letter. As noted in the City's discovery responses, plaintiff was not demoted from Deputy Chief to Captain. He was always a Captain. For a while he held the assignment for a Captain to sit in the capacity of a deputy chief. In addition, as described in the City's responses, I must note that the allegation of impropriety was not the sole reason that this assignment was eliminated and plaintiff was moved to a different Captain's assignment. Regardless of the confidentiality of the ongoing investigation, plaintiff is free to conduct discovery into these other issues.

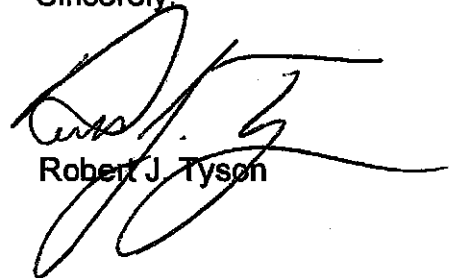
Nevertheless, to move on to the main issue of your letter, the City is, at present, unable to provide you with information from an ongoing internal affairs investigation. As I am sure you are aware, information from police investigations generally, and from internal investigations in particular is confidential. See e.g. *Penal Code* §§ 832.5, 832.7(a); *Evid. Code* § 1043; *Davis v. City of Sacramento* (1994) 24 Cal.App.4<sup>th</sup> 393, 401; *Berkeley Police Ass'n v. City of Berkeley* (2008) 167 Cal.App.4<sup>th</sup> 385, 404-405. A party must typically make a *Pitchess* motion to obtain such records based upon good cause. *Evid. Code* § 1043. However, ongoing investigations and all of the information discovered therein are also subject to an additional layer of confidentiality, *County of Orange v. Sup. Ct.* (2000) 79 Cal.App.4<sup>th</sup> 759, 765, such that good cause to obtain investigation files will be lacking while the investigation is ongoing. Once the investigation is completed, we can either reach an agreement regarding the production of these files or plaintiff can bring a *Pitchess* motion asking the Court to weigh the propriety of the disclosure thereof. While we are not privy to the status of the

Gregory W. Smith, Esq.  
February 24, 2010  
Page 2

investigation, we can contact the City to see if it can provide an update from its investigator regarding the projected completion date of the investigation.

In the meantime, I am willing to agree to an indefinite extension of the time for plaintiff to move to compel until two weeks after plaintiff is notified that the internal affairs investigation has concluded and been advised of the City's position with respect to disclosure of information in these files. Please contact me to confirm your agreement to such an extension.

Sincerely,



Robert J. Tyson

EXHIBIT C

April 2, 2010

**VIA FACSIMILE AND REGULAR MAIL**

Gregory W. Smith, Esq.  
Law Offices of Gregory W. Smith  
6300 Canoga Avenue, Suite 1590  
Woodland Hills, CA 91367


Re: William Taylor v. City of Burbank  
LASC Case No. BC 422252

Dear Mr. Smith:

On March 31, 2010, I spoke with Selma Francia, who informed me that she had been instructed to advise me that you were "furious" over the events of that day (Mr. Taylor's termination) and were canceling Mr. Taylor's deposition for that reason. I asked Selma to have you call me regarding this. I have not received a call so I am writing to follow up and get a date from you for Mr. Taylor's continued deposition.

In addition, your client has now received his Skelly package, which I believe moots his current Pitchess motion. I will amend the City's interrogatory responses to include witness and related information that the City declined to reveal while that investigation was pending. Please advise me of your position on the Pitchess motion in light of this.

Sincerely,



Kristin A. Pelletier

KAP:ac



LAW OFFICES OF  
**GREGORY W. SMITH**  
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TELEPHONE (818) 712-4000 • (213) 385-3400  
FACSIMILE (818) 712-4004

March 31, 2010

**VIA FACSIMILE & U.S. MAIL**

Scott LaChasse, Chief of Police  
Burbank Police Department  
200 North Third Street  
P.O. Box 6459  
Burbank, California 91510-6459

**Re: William Taylor**

Dear Chief LaChasse:

I will be representing Captain Taylor in his upcoming Skelly hearing on April 19, 2010. It appears that the bulk of the charges brought against my client are related to the Porto's Bakery Robbery. I have received the following documents:

23 pages from IA Investigation #34, 4-16-09-1;

19 pages of the Taylor interview;

17 pages of the Puglisi interview;

8 pages of the Misquez interview;

13 pages of the Lower interview;

33 pages of the Stehr interview;

11 pages of the memorandums re: interview of Taylor;

65 pages of the Original Internal Affairs Investigation, 4-26-08-1

1 CD Audio recording re: IA Investigation 4-16-09-1 which incorporates all interviews of original IA 4-26-08-1

Re: William Taylor  
Scott LaChasse, Chief of Police  
March 31, 2010  
Page Two

This letter shall serve to request additional documentation so that I can adequately represent Captain Taylor's case during the upcoming Skelly.

Accordingly, I am requesting that your office immediately provide the following documents and audio recordings:

All documents and audio recordings that were reviewed, generated or prepared by Gardiner during his lengthy investigation.

All interviews and documents for IA 4-16-09-1 and IA 4-26-08-1.

We want all of the findings, consisting of any and all documents or audio recordings, generated by the alleged "independent commission" consisting of Richard Kreisler, Merrick Bobb, Deborah Wong Yang, and members of the City Attorney's office.

Please submit any and all findings concerning the IA 4-16-09-1 and IA 4-26-08-1.

Very truly yours,



Gregory W. Smith

cc: Mr. William Taylor  
Kristin A. Pelletier, Esq.



1                                    **PROOF OF SERVICE BY OVERNIGHT DELIVERY**

2            I am a citizen of the United States and employed in Los Angeles County, California. I am  
3 over the age of eighteen years and not a party to the within-entitled action. My business address  
4 is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. On April 8, 2010,  
5 I deposited with Federal Express, a true and correct copy of the within documents:

6                                    DEFENDANT CITY OF BURBANK'S OPPOSITION TO  
7                                    PLAINTIFF'S MOTION FOR DISCOVERY OF PEACE  
8                                    OFFICER PERSONNEL RECORDS AND MOTION TO  
9                                    COMPEL FURTHER RESPONSES TO INTERROGATORIES  
                                     AND REQUESTS FOR PRODUCTION OF DOCUMENTS;  
                                     DECLARATIONS OF CRAIG VARNER, KRISTIN A.  
                                     PELLETIER, AND ROBERT J. TYSON

10 in a sealed envelope, addressed as follows:

11  
12                                    Gregory W. Smith, Esq.  
13                                    Law Offices of Gregory W. Smith  
14                                    6300 Canoga Ave., Suite 1590  
                                     Woodland Hill, CA 91367

15                                    Christopher Brizzolara, Esq.  
16                                    1528 16th Street  
                                     Santa Monica, CA 90404  
                                     Fax: (310) 656-7701

17            Following ordinary business practices, the envelope was sealed and placed for collection  
18 by Federal Express on this date, and would, in the ordinary course of business, be retrieved by  
19 Federal Express for overnight delivery on this date.

20            I declare that I am employed in the office of a member of the bar of this court at whose  
21 direction the service was made.

22            Executed on April 8, 2010, at Los Angeles, California.

23  
24                                      
25                                    Alice Cheung